



February 1, 2014

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Steve Palmisano, Environmental Projects Analyst
Robert Ketley, Senior Utilities Engineer
City of Watsonville
Watsonville Municipal Service Center
320 Harvest Drive
P.O. Box 50000
Watsonville, CA 95076-5000

**Re: Notice of Violations and Intent to File Suit Under the Federal Water
Pollution Control Act**

Dear Messrs. Ketley and Palmisano:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("the Act") occurring at the City of Watsonville's Watsonville Municipal Service Center facility, located at 320 Harvest Drive, in Watsonville, California ("the Facility" or "MSC"). The WDID number for the Facility is 3 44I003034. CSPA is a non-profit public benefit corporation dedicated to the preservation, protection and defense of the environment, wildlife and natural resources of California waters and the Pacific Ocean. This letter is being sent to you as the responsible owner, officer, or operator of the Facility. Unless otherwise noted, Steve Palmisano, Robert Ketley, and the City of Watsonville shall hereinafter be collectively referred to as "the City of Watsonville."

This letter addresses the City of Watsonville's unlawful discharges of pollutants from the Facility to the City of Watsonville's Municipal Separate Storm Sewer System, which then conveys storm water discharged from the MSC to Watsonville Slough and ultimately to the Pacific Ocean. This letter addresses the ongoing violations of the substantive and procedural requirements of the Clean Water Act and National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water

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Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Order No. 97-03-DWQ ("General Permit" or "General Industrial Storm Water Permit").

Section 505(b) of the Clean Water Act provides that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen must give notice of intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, the City of Watsonville, Steve Palmisano and Robert Ketley are hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against the City of Watsonville, Steve Palmisano and Robert Ketley under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more fully below.

I. Background.

The City of Watsonville owns and operates a recycling and solid waste processing facility at 320 Harvest Drive, in Watsonville, CA 95076-5000, approximately one mile West of downtown Watsonville. The Facility is located at the corner of Riverside Drive and Harvest Drive, in the industrial section of the City of Watsonville. The Facility falls under Standard Industrial Classification ("SIC") Code 5093 ("Scrap and Waste"). The Facility is primarily used for materials storage and recycling, and vehicle servicing as well as vehicle cleaning. The materials processed and stored onsite include but are not limited to: waste paper, plastic, metals, and glass; waste oil; scrap metals including aluminum and steel; waste oils and greases; industrial solvents; waste antifreeze; lead acid batteries; as well as asphalt, sand, road construction and repair debris and wood fiber/pulp in storage bins.

The City of Watsonville collects and discharges storm water from its approximately 7-acre Facility through at least one (1) discharge point into the Municipal Separate Storm Sewer System, Watsonville Slough, and ultimately into the Pacific Ocean. Watsonville Slough and the Pacific Ocean are waters of the United States within the meaning of the Clean Water Act.

The Central Coast Regional Water Quality Control Board ("Regional Board") has established water quality standards for Watsonville Slough and the Pacific Ocean in the "Water Quality Control Plan for the Central Coast Basin" ("Basin Plan"). The Basin Plan incorporates in its entirety the State Board's "Water Quality Control Plan for Ocean Waters of California" ("Ocean Plan"). The Ocean Plan "sets forth limits or levels of water quality characteristics for ocean waters to ensure the reasonable protection of beneficial uses and the prevention of nuisance. The discharge of waste shall not cause violation of these objectives." *Id.* at 4. The Ocean Plan limits the concentration of

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organic materials in marine sediment to levels that would not degrade marine life. *Id.* at 6. The Basin Plan establishes ocean water quality objectives, including that dissolved oxygen is not to be less than 7.0 mg/l and pH must be between 7.0 - 8.5 s.u. *Id.* at III-2. It also establishes that toxic metal concentrations in marine habitats shall not exceed: Cu – 0.01 mg/L; Pb – 0.01 mg/L; Hg – 0.0001 mg/L; Ni – 0.002 mg/L; and, Zn – 0.02 mg/L. *Id.* at III-12.

The Basin Plan provides maximum contaminant levels (“MCLs”) for organic concentrations and inorganic and fluoride concentrations, not to be exceeded in domestic or municipal supply. *Id.* at III-6 - III-7. It requires that water designated for use as domestic or municipal supply shall not exceed the following maximum contaminant levels: aluminum – 1.0 mg/L; arsenic - 0.05 mg/L; lead - 0.05 mg/L; and mercury - 0.002 mg/L. *Id.* at III-7. The EPA has also issued recommended water quality criterion MCLs, or Treatment Techniques, for mercury - 0.002 mg/L; lead – 0.015 mg/L; chromium – 0.1 mg/L; and, copper – 1.3 mg/L. The EPA has also issued a recommended water quality criterion for aluminum for freshwater aquatic life protection of 0.087 mg/L. In addition, the EPA has established a secondary MCL, consumer acceptance limit for aluminum - 0.05 mg/L to 0.2 mg/L, and for zinc - 5.0 mg/L. See <http://www.epa.gov/safewater/mcl.html>. Finally, the California Department of Health Services has established the following MCL, consumer acceptance levels: aluminum – 1 mg/L (primary) and 0.2 mg/L (secondary); chromium – 0.5 mg/L (primary); copper – 1.0 mg/L (secondary); iron – 0.3 mg/L; and zinc – 5.0 mg/L. See California Code of Regulations, title 22, §§ 64431, 64449.

The California Toxics Rule (“CTR”), issued by the EPA in 2000, establishes numeric receiving water limits for certain toxic pollutants in California surface waters. 40 C.F.R. § 131.38. The CTR establishes the following numeric limits for freshwater surface waters: arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L (continuous concentration); chromium (III) – 0.550 mg/L (maximum concentration) and 0.180 mg/L (continuous concentration); copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration).

The Regional Board has identified waters of the Central Coast as failing to meet water quality standards for pollutant/stressors such as unknown toxicity, numerous pesticides, and mercury.¹ It identified the Pacific Ocean in the area between Point Año Nuevo and Soquel Point as failing to meet water quality standards due to the pollutant/stressor Dieldrin. Discharges of listed pollutants into an impaired surface water may be deemed a “contribution” to an exceedance of the CTR, a water quality standard, and may indicate a failure on the part of a discharger to implement adequate storm water pollution control measures. See *Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); see also *Waterkeepers Northern Cal. v. Ag Indus. Mfg.*,

¹ See http://www.waterboards.ca.gov/water_issues/programs/tmdl/2010state_ir_reports/category5_report.shtml.

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Inc., 2005 WL 2001037 at *3, 5 (E.D. Cal., Aug. 19, 2005) (finding that a discharger covered by the General Industrial Storm Water Permit was “subject to effluent limitation as to certain pollutants, including zinc, lead, copper, aluminum and lead” under the CTR).

The General Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”). The following benchmarks have been established for pollutants discharged by the City of Watsonville: zinc – 0.117 mg/L; copper – 0.0636 mg/L; iron – 1.0 mg/L; lead – 0.0816 mg/L; aluminum – 0.75 mg/L; chemical oxygen demand – 120 mg/L; and total suspended solids – 100.0 mg/L. The State Water Quality Control Board has also proposed adding a benchmark level for specific conductance – 200 µmhos/cm and total organic carbon – 110 mg/L. Additional EPA benchmark levels have been established for other parameters that CSPA believes are being discharged from the Facility, including but not limited to: pH – 6.0 – 9.0 s.u.; oil & grease – 15 mg/L; mercury – 0.0024 mg/L; nickel – 1.417 mg/L; magnesium – 0.0636 mg/L; cadmium – 0.0159 mg/L.

II. The City of Watsonville Is Violating the Act by Discharging Pollutants From the Facility to Waters of the United States.

Under the Act, it is unlawful to discharge pollutants from a “point source” to navigable waters without obtaining and complying with a permit governing the quantity and quality of discharges. *Trustees for Alaska v. EPA*, 749 F.2d 549, 553 (9th Cir. 1984). Section 301(a) of the Clean Water Act prohibits “the discharge of any pollutants by any person . . .” except as in compliance with, among other sections of the Act, Section 402, the NPDES permitting requirements. 33 U.S.C. § 1311(a). The duty to apply for a permit extends to “[a]ny person who discharges or proposes to discharge pollutants. . . .” 40 C.F.R. § 122.30(a).

The term “discharge of pollutants” means “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12). Pollutants are defined to include, among other examples, a variety of metals, chemical wastes, biological materials, heat, rock, and sand discharged into water. 33 U.S.C. § 1362(6). A point source is defined as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14). An industrial facility that discharges pollutants into a navigable water is subject to regulation as a “point source” under the Clean Water Act. *Comm. to Save Mokelumne River v. East Bay Mun. Util. Dist.*, 13 F.3d 305, 308 (9th Cir. 1993). “Navigable waters” means “the waters of the United States.” 33 U.S.C. § 1362(7). Navigable waters under the Act include man-made waterbodies and any tributaries or waters adjacent to other waters of the United States. *See Headwaters, Inc. v Talent Irrigation Dist.*, 243 F.3d 526, 533 (9th Cir. 2001).

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Watsonville Slough and the Pacific Ocean are waters of the United States. Accordingly, the City of Watsonville's discharges of storm water containing pollutants from the Facility are discharges to waters of the United States.

CSPA is informed and believes, and thereupon alleges, that the City of Watsonville has discharged, and continues to discharge, pollutants from the Facility to waters of the United States every day that there has been or will be any measurable discharge of storm water from the Facility since March 19, 1992. Each discharge on each separate day is a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These unlawful discharges are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, the City of Watsonville is subject to penalties for violations of the Act since February 1, 2009.

III. Pollutant Discharges in Violation of the NPDES Permit.

The City of Watsonville has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit such as the General Permit. 33 U.S.C. § 1342. The General Permit prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, Oil & Grease ("O&G"), pH, biochemical oxygen demand ("BOD"), and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

Further, Discharge Prohibition A(1) of the General Permit provides: "Except as allowed in Special Conditions (D.1.) of this General Permit, materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit." Special Conditions D(1) of the General Permit sets forth the conditions that must be met for any discharge of non-storm water to constitute an authorized non-storm water discharge.

Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

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Based on its review of available public documents, CSPA is informed and believes: (1) that the City of Watsonville continues to discharge pollutants in excess of benchmarks and (2) that the City of Watsonville has failed to implement BMPs adequate to bring its discharge of these and other pollutants in compliance with the General Permit. The City of Watsonville's ongoing violations are discussed further below.

A. The City of Watsonville Has Discharged Storm Water Containing Pollutants in Violation of the Permit.

The City of Watsonville has discharged and continues to discharge storm water with unacceptable levels of Zinc (Zn), Iron (Fe), Aluminum (Al), Total Suspended Solids (TSS), Specific Conductance (SC), and Copper (Cu), in violation of the General Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as Attachment A. The City of Watsonville's Annual Reports and Sampling and Analysis Results confirm discharges of materials other than storm water and specific pollutants in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit:

1. Discharge of Storm Water Containing Zinc (Zn) at Concentration in Excess of Applicable EPA Benchmark Value.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
4/7/09	West Corner Drain Inlet	Zn	.260 mg/l	.117 mg/l
2/2/10	West Corner Drain Inlet	Zn	.260 mg/l	.117 mg/l
10/22/10	West Corner Drain Inlet	Zn	.270 mg/l	.117 mg/l
12/14/10	West Corner Drain Inlet	Zn	.270 mg/l	.117 mg/l
12/15/11	West Corner Drain Inlet	Zn	.660 mg/l	.117 mg/l
3/13/12	West Corner Drain Inlet	Zn	1.422 mg/L	.117 mg/l
11/8/12	West Corner Drain Inlet	Zn	.462 mg/l	.117 mg/l

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**1. Discharge of Storm Water Containing Iron (Fe) at
 Concentration in Excess of Applicable EPA Benchmark Value.**

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
4/7/09	West Corner Drain Inlet	Fe	3.4 mg/l	1.0 mg/l
1/12/10	West Corner Drain Inlet	Fe	3.7 mg/l	1.0 mg/l
2/2/10	West Corner Drain Inlet	Fe	11 mg/l	1.0 mg/l
10/22/10	West Corner Drain Inlet	Fe	8.6 mg/l	1.0 mg/l
12/14/10	West Corner Drain Inlet	Fe	1.205 mg/l	1.0 mg/l
12/15/12	West Corner Drain Inlet	Fe	6.32 mg/l	1.0 mg/l
3/13/12	West Corner Drain Inlet	Fe	7.695 mg/L	1.0 mg/l
11/8/12	West Corner Drain Inlet	Fe	7.827 mg/l	1.0 mg/l

**3. Discharge of Storm Water Containing Aluminum (Al) at
 Concentration in Excess of Applicable EPA Benchmark Value.**

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
4/7/09	West Corner Drain Inlet	Al	2.4 mg/l	.75 mg/l
1/12/10	West Corner Drain Inlet	Al	3.6 mg/l	.75 mg/l
2/2/10	West Corner Drain Inlet	Al	8.6 mg/l	.75 mg/l
10/22/10	West Corner Drain Inlet	Al	4.3 mg/l	.75 mg/l
12/15/11	West Corner Drain Inlet	Al	5.672 mg/l	.75 mg/l
3/13/12	West Corner Drain Inlet	Al	14.68 mg/L	.75 mg/l

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4. Discharge of Storm Water Containing Total Suspended Solids (TSS) at Concentration in Excess of Applicable EPA Benchmark Value.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
2/2/10	West Corner Drain Inlet	TSS	206 mg/l	100 mg/l
12/15/11	West Corner Drain Inlet	TSS	160 mg/l	100 mg/l
3/13/12	West Corner Drain Inlet	TSS	309 mg/l	100 mg/l
11/8/12	West Corner Drain Inlet	TSS	229 mg/l	100 mg/l

5. Discharge of Storm Water Containing Specific Conductance (SC) at Concentration in Excess of Proposed EPA Benchmark Value.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
4/7/09	West Corner Drain Inlet	SC	1109 µmhos/cm	200 µmhos/cm
1/12/10	West Corner Drain Inlet	SC	213 µmhos/cm	200 µmhos/cm
10/22/10	West Corner Drain Inlet	SC	398 µmhos/cm	200 µmhos/cm
12/15/11	West Corner Drain Inlet	SC	344 µmhos/cm	200 µmhos/cm
3/13/12	West Corner Drain Inlet	SC	326 µmhos/cm	200 µmhos/cm

6. Discharge of Storm Water Containing Copper (Cu) at Concentration in Excess of Proposed EPA Benchmark Value.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
11/8/12	West Corner Drain Inlet	Cu	.0850 mg/l	.0636 mg/l

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CSPA's investigation, including its review of the City of Watsonville's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of EPA's benchmark values and the State Board's proposed benchmark levels for specific conductivity, indicates that the City of Watsonville has not implemented BAT and BCT at the Facility for its discharges of Zinc (Zn), Iron (Fe), Aluminum (Al), Total Suspended Solids (TSS), Specific Conductance (SC), Copper (Cu), and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. The City of Watsonville was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, the City of Watsonville is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that the City of Watsonville has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least February 1, 2009. CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since February 1, 2009, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that the City of Watsonville has discharged storm water containing impermissible levels of Zinc (Zn), Iron (Fe), Aluminum (Al), Total Suspended Solids (TSS), Specific Conductance (SC), and Copper (Cu) in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, the City of Watsonville is subject to penalties for violations of the General Permit and the Act since February 1, 2009.

B. The City of Watsonville Has Failed to Implement an Adequate Monitoring & Reporting Plan.

Section B of the General Industrial Storm Water Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Plan by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the General Permit requires that dischargers "shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled." Section B(5)(c)(i) further requires

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that the samples shall be analyzed for total suspended solids, pH, specific conductance, and total organic carbon. Oil and grease may be substituted for total organic carbon. Section B(5)(c)(ii) of the General Permit further requires dischargers to analyze samples for all “[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.” Section B(10) of the General Permit provides that “facility operators shall explain how the facility’s monitoring program will satisfy the monitoring program objectives of [General Permit] Section B.2.”

Based on its investigation, CSPA is informed and believes that the City of Watsonville has failed to develop and implement an adequate Monitoring & Reporting Plan. First, based on its review of publicly available documents, CSPA is informed and believes that the City of Watsonville has failed to collect storm water samples during at least two qualifying storms events, as defined by the General Permit, during four of the past five Wet Seasons. Second, based on its review of publicly available documents, CSPA is informed and believes that the City of Watsonville has failed to conduct the monthly visual monitoring of storm water discharges and the quarterly visual observations of unauthorized non-storm water discharges required under the General Permit during four of the past five Wet Seasons. Third, based on its review of publicly available documents, CSPA is informed and believes that for the past five Wet Seasons, the City of Watsonville has failed to analyze samples for other pollutants that are likely to be present in significant quantities in the storm water discharged from the Facility including mercury, nickel, magnesium, and cadmium. Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, the City of Watsonville is subject to penalties for violations of the General Permit and the Act since February 1, 2009. These violations are set forth in greater detail below:

1. The City of Watsonville Has Failed to Collect Storm Water Samples During at Least Two Rain Events In Each of the Last Five Wet Seasons.

Based on its review of publicly available documents, CSPA is informed and believes that the City of Watsonville has failed to collect storm water samples from all discharge points during at least two qualifying rain events at the Facility during each of the past five Wet Seasons, as required by the General Permit. For example, CSPA notes that the Annual Report filed by the City of Watsonville for the Facility for the 2010-2011 Wet Season reported that the City of Watsonville analyzed samples of storm water discharged during two qualifying storm events that season. However, upon closer scrutiny it turns out that both storms sampled were not qualifying storm events within the meaning of the General Permit (discussed further below). Similarly, in the 2009-2010 Annual Report, the City of Watsonville sampled from a storm event that was not a qualifying storm event, either. Further, in each of the 2011-2012, and 2012-2013, Annual Reports, the City of Watsonville sampled on days where little to no rain fell on the

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Facility, thus the City of Watsonville failed to sample from two qualifying storm events for those seasons, as required by the General Permit.

The City of Watsonville reported in four of the five Wet Seasons (i.e., 2009-2010; 2010-2011; 2011-2012; 2012-2013 Wet Seasons), that the Facility sampled the first qualifying storm event of the season, when in fact it did not sample the first storm of the season during three of those four Wet Seasons. For example, the City of Watsonville reported in its 2009-2010 Annual Report that it sampled the first qualifying storm event of the Wet Season, but the City of Watsonville's first sample is from January 12, 2010. Based upon its review of publicly available rainfall data, CSPA is informed and believes that the first qualifying storm event of the 2009-2010 Wet Season occurred as early as Monday, December 7, 2009, when 0.45" of rain fell on the Facility. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Act.

Further, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than the one sampling/discharge point currently designated by the City of Watsonville. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Act.

2. The City of Watsonville Has Failed to Conduct the Monthly Wet Season Observations of Storm Water Discharges Required by the General Permit.

The General Permit requires dischargers to "visually observe storm water discharges from one storm event per month during the Wet Season (October 1 – May 30)." General Permit, Section B(4)(a). As evidenced by the entries on Form 4 Monthly Visual Observations contained in the City of Watsonville's annual reports for the last five Wet Seasons, CSPA is informed and believes that the City of Watsonville has failed to comply with this requirement of the General Permit.

Specifically, the City of Watsonville failed to conduct monthly visual observations of discharges from qualifying storm events for most months during four of the past five Wet Seasons. Instead, the City of Watsonville either completely failed to document visual observations at all or documented its visual observations of storm water that discharged during non-qualifying storm events, for most months during the entire Wet Season of four of the past five years (discussed further below). However, based on publicly available rainfall data, CSPA is informed and believes that there were many qualifying storm events during each of these Wet Seasons that the City of Watsonville could have observed.

For example, the City of Watsonville reported in its 2010-2011 Annual Report that it observed a qualifying storm event on Wednesday, March 16, 2011. However, CSPA is informed and believes that this could not possibly be true because 0.13" of rain

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fell on the Facility the day before, on March 15, 2011, likely making that March 15th storm a qualifying storm event and disqualifying all storm events for the next three days. Further, the City of Watsonville reported in its 2012-2013 Annual Report that it conducted observations for all the months during the Wet Season, but upon review of the Annual Report the City of Watsonville failed to conduct any monitoring whatsoever despite the fact that there were many qualifying storm events from which to conduct visual observations. The City of Watsonville's failure to conduct this required monthly Wet Season visual monitoring extends back to at least February 1, 2009. The City of Watsonville's failure to conduct this required monthly Wet Season visual monitoring has caused and continues to cause multiple, separate and ongoing violations of the General Permit and the Act.

4. The City of Watsonville Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since February 1, 2009.

CSPA is informed and believes that publicly available documents demonstrate the City of Watsonville's consistent and ongoing failure to implement an adequate Monitoring Reporting Plan in violation of Section B of the General Permit. For example, while in its 2010-2011 Annual Report the City of Watsonville reported having collected samples of storm water discharged during two qualifying storm events, neither of the two storm events sampled was a qualifying storm event within the meaning of the General Permit. Based on its review of publicly available rainfall data, CSPA is informed and believes that the storm that occurred at the Facility on October 22, 2010 was not a qualifying storm event because only .05 inches of rain fell on the Facility that day. Further, based on its review of publicly available rainfall data, CSPA is informed and believes that the storm that occurred at the Facility on December 22, 2010 was not a qualifying storm event because only .03 inches of rain fell on the Facility that day. Therefore, the City of Watsonville failed to implement an adequate Monitoring Reporting Plan.

Additionally, the City of Watsonville is in violation of the General Permit's requirement that the testing method employed in laboratory analyses of pollutant concentrations present in storm water discharged from the Facility be "adequate to satisfy the objectives of the monitoring program." General Permit Section B.10.a.iii. The Regional Board has determined the appropriate laboratory test methods to employ when analyzing storm water samples for the presence and concentration of various pollutants, as well as the appropriate detection limits for those testing methods.

However, in every single annual report filed by the City of Watsonville, in the last five years the test methods and detection limits employed by the laboratory utilized by the City of Watsonville to analyze the concentration of the pollutants present in the storm water discharged from its Facility did not comply with the Regional Board requirements. For example, the testing method the City of Watsonville was required to apply for lead, zinc, and iron was EPA 200.8 with a detection limit of .0005. However, in the annual

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report filed by the City of Watsonville in 2010-2011 the laboratory utilized test method EPA 200.7 with detection limits of .005, .0029, and .0065 respectively. Further, in the annual report filed by the City of Watsonville in 2008-2009, the detection limits for copper, zinc, aluminum, and iron were above the required detection limits by at least an order of magnitude. These are just a few of many examples of the City of Watsonville's failure to adequately test the presence and concentration of pollutants at their storm water discharge points

The City of Watsonville is in violation of the General Permit for failing to employ laboratory test methods that are adequate to, among other things, "ensure that storm water discharges are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in this General Permit." General Permit, Section B.2.a. ("Monitoring Program Objectives"). Accordingly, consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, the City of Watsonville is subject to penalties for these violations of the General Permit and the Act since February 1, 2009.

C. The City of Watsonville Has Failed to Implement BAT and BCT.

Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). CSPA's investigation indicates that the City of Watsonville has not implemented BAT and BCT at the Facility for its discharges of Zinc (Zn), Iron (Fe), Aluminum (Al), Total Suspended Solids (TSS), Specific Conductance (SC), and Copper (Cu) and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

To meet the BAT/BCT requirement of the General Permit, the City of Watsonville must evaluate all pollutant sources at the Facility and implement the best structural and non-structural management practices economically achievable to reduce or prevent the discharge of pollutants from the Facility. Based on the limited information available regarding the internal structure of the Facility, CSPA believes that at a minimum the City of Watsonville must improve its housekeeping practices, store materials that act as pollutant sources under cover or in contained areas, treat storm water to reduce pollutants before discharge (e.g., with filters or treatment boxes), and/or prevent storm water discharge altogether. The City of Watsonville has failed to adequately implement such measures.

The City of Watsonville was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, the City of Watsonville has been in continuous violation of the BAT and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that it fails to implement BAT and BCT. The City of Watsonville is subject to penalties for violations of the General Permit and the Act occurring since February 1, 2009.

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D. The City of Watsonville Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.

Section A(1) and Provision E(2) of the General Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to Water Quality Order No. 97-03-DWQ to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 9, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must also include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)). Receiving Water Limitation C(3) of the Order requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce the discharge of any pollutants causing or contributing to the exceedance of water quality standards.

CSPA's investigation and review of publicly available documents regarding conditions at the Facility indicate that the City of Watsonville has been operating with an

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inadequately developed or implemented SWPPP in violation of the requirements set forth above. The City of Watsonville has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Accordingly, the City of Watsonville has been in continuous violation of Section A(1) and Provision E(2) of the General Permit every day since October 1, 1992, and will continue to be in violation every day that it fails to develop and implement an effective SWPPP. The City of Watsonville is subject to penalties for violations of the General Permit and the Act occurring since February 1, 2009.

E. The City of Watsonville Has Failed to Address Discharges Contributing to Exceedances of Water Quality Standards.

Receiving Water Limitation C(3) requires a discharger to prepare and submit a report to the Regional Board describing changes it will make to its current BMPs in order to prevent or reduce the discharge of any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. Once approved by the Regional Board, the additional BMPs must be incorporated into the Facility's SWPPP. The report must be submitted to the Regional Board no later than 60-days from the date the discharger first learns that its discharge is causing or contributing to an exceedance of an applicable water quality standard. Receiving Water Limitation C(4)(a). Section C(11)(d) of the Permit's Standard Provisions also requires dischargers to report any noncompliance. *See also* Provision E(6). Lastly, Section A(9) of the Permit requires an annual evaluation of storm water controls including the preparation of an evaluation report and implementation of any additional measures in the SWPPP to respond to the monitoring results and other inspection activities.

As indicated above, the City of Watsonville is discharging elevated levels of Zinc (Zn), Iron (Fe), Aluminum (Al), Total Suspended Solids (TSS), Specific Conductance (SC), and Copper (Cu) and other unmonitored pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, the City of Watsonville was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards.

Based on CSPA's review of available documents, the City of Watsonville was aware of high levels of these pollutants prior to February 1, 2009. Likewise, the City of Watsonville has generally failed to file reports describing its noncompliance with the General Permit in violation of Section C(11)(d). Lastly, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). The City of Watsonville has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Permit every day since February 1, 2009, and will continue to be in violation every day it fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include approved BMPs. The City of Watsonville is subject to

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penalties for violations of the General Permit and the Act occurring since February 1, 2009.

F. The City of Watsonville Has Failed to File Timely, True and Correct Reports.

Section B(14) of the General Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial Storm Water Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

CSPA's investigation indicates that the City of Watsonville has submitted incomplete Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. For example, the City of Watsonville reported in four Annual Reports filed for the past five Wet Seasons (i.e., 2009-2010; 2010-2011; 2011-2012; and 2012-2013) that it observed storm water discharges occurring during the first storm of every Wet Season. However, as discussed above, based on CSPA's review of publicly available rainfall data, CSPA believes this cannot possibly be true.

Further, the City of Watsonville failed to sample from qualifying storm events in five out of ten storm water samples collected during the last five Wet Seasons. For example, as discussed above, in 2010-2011, the City of Watsonville sampled from a storm event on October 22, 2010 that was not a qualifying storm event. Further, in the 2011-2012 Annual Report, the City of Watsonville reported that it sampled a qualifying storm event on December 15, 2011. Based on its review of publicly available rainfall data, CSPA is informed and believes that the storm that occurred at the Facility on December 15, 2011 was not a qualifying storm event because only .05 inches of rain fell on the Facility that day.

Further, the City of Watsonville failed to comply with the monthly visual observations of storm water discharges requirement for four of the past five Annual Reports filed for the Facility. In the 2012-2013 Annual Report, the City of Watsonville did not observe a single qualifying storm event within the meaning of the General Permit. In the 2011-2012 Annual Report, the City of Watsonville reported that it observed discharge from a qualifying storm event on December 15, 2011. However, based on publicly available rainfall data, CSPA is informed and believes that this cannot possibly be true because only .05 inches of rain fell on the facility on that day.

These are only a few examples of how the City of Watsonville has failed to file completely true and accurate reports. As indicated above, the City of Watsonville has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, the City of Watsonville has violated Sections A(9)(d), B(14) and C(9) & (10)

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of the Permit every time the City of Watsonville submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. The City of Watsonville's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. The City of Watsonville is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since February 1, 2009.

IV. Persons Responsible for the Violations.

CSPA puts the City of Watsonville, Steve Palmisano and Robert Ketley on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts the City of Watsonville, Steve Palmisano and Robert Ketley on notice that it intends to include those persons in this action.

V. Name and Address of Noticing Party.

Our name, address and telephone number is as follows: California Sportfishing Protection Alliance, Bill Jennings, Executive Director; 3536 Rainier Avenue, Stockton, CA 95204; Phone: (209) 464-5067.

VI. Counsel.

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Andrew L. Packard
Law Offices of Andrew L. Packard
100 Petaluma Boulevard North, Suite 301
Petaluma, CA 94952
Tel. (707) 763-7227
Fax. (707) 763-9227
Email: Andrew@PackardLawOffices.com

VII. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act the City of Watsonville, Steve Palmisano, and Robert Ketley to a penalty of up to \$37,500 per day per violation for all violations occurring after January 12, 2009, during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33

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U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against the City of Watsonville, Steve Palmisano, and Robert Ketley and their agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings", is written over a horizontal line.

Bill Jennings, Executive Director
California Sportfishing Protection Alliance

SERVICE LIST

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Jared Blumenfeld
Administrator, U.S. EPA – Region 9
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San Francisco, CA, 94105

Eric Holder
U.S. Attorney General
U.S. Department of Justice
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Washington, DC 20530-0001

Thomas Howard, Executive Director
State Water Resources Control Board
1001 I Street Sacramento, CA 95814
P.O. Box 100
Sacramento, CA 95812-0100

Kenneth A. Harris, Jr., Executive Officer
Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

ATTACHMENT A**Notice of Intent to File Suit, Watsonville Municipal Service Center
Significant Rain Events,* February 1, 2009 – February 1, 2014**

	Jan 12 2010	Dec 19 2010	Jan 22 2012
Feb 2 2008	Jan 13 2010	Dec 25 2010	Jan 23 2012
Feb 19 2008	Jan 17 2010	Dec 28 2010	Feb 13 2012
Feb 22 2008	Jan 18 2010	Dec 29 2010	Feb 29 2012
Feb 23 2008	Jan 19 2010	Jan 1 2011	Mar 1 2012
Feb 24 2008	Jan 20 2010	Jan 2 2011	Mar 13 2012
Apr 24 2008	Jan 22 2010	Jan 30 2011	Mar 14 2012
Oct 2 2008	Jan 26 2010	Feb 16 2011	Mar 15 2012
Nov 1 2008	Jan 29 2010	Feb 17 2011	Mar 16 2012
Nov 3 2008	Feb 4 2010	Feb 18 2011	Mar 17 2012
Nov 26 2008	Feb 6 2010	Feb 19 2011	Mar 24 2012
Dec 14 2008	Feb 9 2010	Mar 13 2011	Mar 25 2012
Dec 15 2008	Feb 21 2010	Mar 14 2011	Mar 27 2012
Dec 16 2008	Feb 23 2010	Mar 15 2011	Mar 31 2012
Dec 19 2008	Feb 4 2010	Mar 16 2011	Apr 10 2012
Dec 21 2008	Feb 26 2010	Mar 18 2011	Apr 12 2012
Dec 25 2008	Feb 27 2010	Mar 19 2011	Apr 13 2012
Jan 21 2009	Mar 2 2010	Mar 20 2011	Apr 25 2012
Jan 21 2009	Mar 3 2010	Mar 21 2011	Apr 26 2012
Jan 21 2009	Mar 10 2010	Mar 22 2011	Jun 2 2012
Feb 6 2009	Mar 12 2010	Mar 23 2011	Sep 5 2012
Feb 8 2009	Apr 2 2010	Mar 24 2011	Oct 22 2012
Feb 11 2009	Apr 4 2010	Mar 25 2011	Nov 1 2012
Feb 13 2009	Apr 11 2010	Mar 26 2011	Nov 8 2012
Feb 14 2009	Apr 12 2010	Apr 7 2011	Nov 9 2012
Feb 15 2009	Apr 20 2010	May 14 2011	Nov 16 2012
Feb 16 2009	Apr 27 2010	May 15 2011	Nov 17 2012
Feb 17 2009	Apr 28 2010	May 16 2011	Nov 18 2012
Feb 22 2009	May 10 2010	May 17 2011	Nov 21 2012
Feb 23 2009	Oct 17 2010	May 25 2011	Nov 28 2012
Mar 2 2009	Oct 23 2010	May 28 2011	Nov 30 2012
Mar 3 2009	Oct 24 2010	Jun 4 2011	Dec 1 2012
Mar 22 2009	Oct 30 2010	Jun 28 2011	Dec 2 2012
Apr 7 2009	Nov 7 2010	Oct 3 2011	Dec 5 2012
Mar 1 2009	Nov 19 2010	Oct 4 2011	Dec 12 2012
Oct 13 2009	Nov 20 2010	Oct 5 2011	Dec 15 2012
Dec 7 2009	Nov 21 2010	Nov 5 2011	Dec 17 2012
Dec 11 2009	Nov 23 2010	Nov 11 2011	Dec 22 2012
Dec 12 2009	Nov 27 2010	Nov 19 2011	Dec 23 2012
Dec 13 2009	Dec 5 2010	Nov 20 2011	Dec 25 2012
Dec 26 2009	Dec 17 2010	Jan 20 2012	Dec 29 2012
Dec 27 2009	Dec 18 2010	Jan 21 2012	Jan 5 2013

* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

ATTACHMENT A

**Notice of Intent to File Suit, Watsonville Municipal Service Center
Significant Rain Events,* February 1, 2009 – February 1, 2014**

Jan 6 2013
Feb 19 2013
Mar 6 2013
Mar 7 2013
Apr 4 2013
Apr 7 2013
Oct 29 2013
Nov 19 2013
Nov 20 2013
Dec 7 2013

* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.